

13 July 1999

Re: NEPA Technical Inquiry 0543 - Proposed Antenna NEPA Compliance Obligations

Dear NEPA Call-In User:

This letter is in response to your June 17, 1999 request for guidance on GSA's National Policy Act (NEPA) compliance responsibilities concerning a proposed radio tower installation region. Specifically, you wanted to know if GSA has a NEPA or National Historic Preservation Act compliance obligation surrounding this action.

SUMMARY OF FINDINGS

Any GSA proposed action that may have an impact on the quality of the human environment must meet the requirements of NEPA. To comply with NEPA, it appears that GSA should prepare a Checklist to confirm that no extraordinary circumstances exist that would require GSA Environmental Assessment (EA) or Environmental Impact Statement (EIS) on the proposed action. NEPA requires that multiple agencies involved in a single Federal proposed action must either act as cooperating agencies, or designate a lead agency in the NEPA analysis process. A subject to compliance with Section 106 of the NHPA. An undertaking is anything that a Federal agency assists, or permits that has the potential to affect historic properties, whether or not they have been identified. GSA can delegate tasks associated with NHPA Section 106 to a contractor, but it is GSA's responsibility to comply with the NHPA. Our detailed findings are presented below.

DETAILED FINDINGS

NEPA Call-In assumes that the tower will be installed on land currently owned by GSA or a local government. As such, GSA is responsible for ensuring that the proposed action (transfer of the tower to a local government for construction of the tower) is planned in accordance with the NEPA Call-In reviewed the Public Buildings Service (PBS) NEPA Desk Guide, Final Guidance to determine when GSA must apply the NEPA process. The PBS NEPA Desk Guide serves as guidance for GSA compliance activities. Section 1.2, "Application of this Desk Guide" states:

"The policies, procedures, and practices described here apply to GSA actions, including developing, managing and disposing of real property, that may have an impact on the environment. They apply to all GSA business lines, GSA staff, contractors, and other entities under GSA oversight."

Therefore, it appears that the proposed action is subject to the NEPA environmental review process. To determine the proper level of NEPA analysis for this proposed action, we reviewed NEPA Desk Guide section 5, "Categorical Exclusions." Automatic CATEX 5(v) states "Disposal of real property wherein Congress has specifically exempted the action from the requirements of NEPA." If GSA does not state these conditions, NEPA Call-In assumes Congress has not exempted the proposed action from the requirements of NEPA and the proposed action does not qualify as an Automatic CATEX. We reviewed Desk Guide section 5.4, "Checklist CATEXs." The purpose of the checklist is to determine if extraordinary circumstances exist that would require preparation of an EA or EIS. It appears to fit Checklist CATEX 5(d), "Transfers of real property to Federal, State, Local, and Indian Tribes." NEPA Desk Guide Section 5.9, "Completing the Environmental Checklist," provides guidance on completing the checklist.

In addition, you stated the proposed antenna installation is subject to Federal Communications Commission (FCC) license. Since multiple agencies (GSA and FCC) would be involved in licensing and NEPA Call-In further reviewed the NEPA Desk Guide for additional guidance on which agency is responsible for implementing the NEPA process. Section 2.6.1 of the NEPA Desk Guide, "GSA as Lead Agency," states that GSA is the lead agency for implementing NEPA. The Council on Environmental Quality (CEQ) regulations for implementing NEPA contained in 40 Code of Federal Regulations (CFR) Part 1501.5. This citation states that to determine which agency is responsible for a specific situation, use the following guidelines:

"Potential lead agencies shall determine by letter of memorandum which agency shall which shall be cooperating agencies. The agencies shall resolve the lead agency que delay. If there is disagreement among the agencies, the following factors (which ar descending importance) shall determine lead agency designation:

1. Magnitude of the agency's involvement;
2. Project approval/disapproval authority;
3. Expertise concerning the action's environmental effects;
4. Duration of agency's involvement; and
5. Sequence of agency's involvement."

If GSA is determined not to be lead agency for NEPA compliance activities concerning then GSA may be responsible as a cooperating agency (see NEPA Desk Guide, Section 2. Cooperating Agency").

Finally, the e-mail stated that the County has documented its opinion that no histor would be adversely affected by the tower, although four historic properties are loca miles of the facility. NEPA Call-In reviewed its database of Technical Inquiries (T if the County's determination can be used to satisfy GSA's obligations under the NHP previously addressed this issue in TI-0023 (enclosed), which states that a Federal a tasks associated with the Section 106 process to non-Federal entities but the Federa responsible for Section 106 compliance. A Federal agency may delegate its Section 1 responsibilities to a non-Federal agency after it has developed a Programmatic Agree in consultation with the ACHP indicating this transfer of responsibility. However, G does not have any PAs delegating Section 106 Compliance to non-Federal entities. NE the new NHPA Section 106 regulations effective June 17, 1999, and found that this re change under the new regulations.

The materials in this TI have been prepared for use by GSA employees and contractors at this site only to permit the general public to learn more about NEPA. The informa constitute legal advice or substitute for obtaining legal advice from an attorney li and may or may not reflect the most current legal developments. Readers should also response is based upon laws, regulations, and policies in place at the time it was p response will not be updated to reflect changes to those laws, regulations and polic

Sincerely,

(Original Signed)

NEPA Call-In Researcher